



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 1909-23  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 1 November 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional along with your response to the AO.

You enlisted in the U.S. Marine Corps Reserve (USMCR) on 27 December 1988 and, after a period of active duty for training (ACDU), you began Selected Reserve duty on 12 May 1989. Between 12 May 1989, and 30 September 1989, you failed to attend regularly scheduled drills and, on 3 June 1990, were reduced in rank to E-1 for unsatisfactory drill participation. Between 13 and 15 May 1994, you again missed scheduled drills. Ultimately, on 22 May 1995, you were discharged in absentia from the USMCR for Unsatisfactory Participation, with an Other Than Honorable (OTH) characterization of service.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your desire to upgrade your discharge and contentions that: (1) your father, who was your best friend, died in a drunk driving accident in 1993, your sister had previously been killed in a car accident in 1991, and, after your father's death, you fell into depression, (2) at the last drill you attended, you were at your lowest, and a fellow Marine who was concerned about you notified leadership, which resulted in you being pulled from training by an officer who told you, "You need to straighten up. The Marine Corps is your father now, and if you can't get it together, then you need to get your shit straight before coming back," (3) you did not return for drills, and did not know you had been discharged until you called the unit, (4) in June 2022, you looked back through your documentation and realized you never received communications from your unit because the unit did not use your correct address, which was in your record, and (5) your record also stated the unit did not try to deliver notice to you in person because your residence was more than 50 miles from the reserve center, which was incorrect. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 31 August 2023. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms of provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After reviewing the rebuttal evidence you submitted in response to the AO, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your repeated failure to participate in regularly scheduled drills, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board noted your unsatisfactory participation included a period prior to the death of your father. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, even in light of the Kurta, Hagel,

and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

11/17/2023

